

04 NCAC 16G .0718 ORDER FORMS FOR PURCHASE OF CAPITAL STOCK

(a) After the Commissioner of Banks has authorized the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders (if applicable), voting members, and other persons who may subscribe for shares of capital stock under the plan of conversion. If the applicant has adopted in its plan of conversion the optional provisions set forth in Items (4), (5) or (10) of Rule .0312 of this Subchapter, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(b) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering and a set of detailed instructions explaining how to complete the order forms. The offering circular and order form instructions may be included in the same document.

(c) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the offering circular approved by the Commissioner of Banks. If either the maximum subscription price or the actual subscription price is not within the approved subscription price range, the applicant shall obtain the written consent of the Commissioner of Banks for the change in price. Based on the magnitude of the difference the Commissioner of Banks may condition the amended approval by requiring a resolicitation of proxies, order forms, or both. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(d) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions that are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. Each order form shall:

- (1) indicate the maximum number of shares that may be purchased pursuant to the subscription offering;
- (2) indicate the period of time that the subscription rights must be exercised, which shall not be less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;
- (3) state the maximum subscription price per share of capital stock;
- (4) indicate any requirements as to the minimum number of shares of capital stock that must be purchased;
- (5) provide a designated blank space or spaces for indicating the number of shares of capital stock that the eligible account holder or other person wishes to purchase;
- (6) indicate the manner of required payment and, if the payment may be made by withdrawal from a certificate of deposit, indicate that the withdrawal may be made without penalty. If payment is to be made by a withdrawal from a deposit account or certificate of deposit, a box to check shall be provided;
- (7) provide designated blank spaces for dating and signing the order form;
- (8) contain an acknowledgement by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing the order form; and
- (9) indicate the consequences of failing to complete and return the order form, including a statement to which the subscription rights are nontransferable and shall become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places that the order forms are to be returned and when the order forms shall be deemed to be received.

(e) The order form may provide that it shall not be modified without the applicant's consent after the order form has been returned to the applicant. If payment is to be made by withdrawal from a deposit account or certificate of deposit, the applicant may cause the withdrawal to be made upon receipt of the order form. If the withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if the amount had remained in the account from which it was withdrawn until the closing date.

*History Note: Authority G.S. 54C-33; 54C-53;
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